

On August 25, 2003, Person was charged with Forgery, a Class C felony, and three other counts, a Class D felony and two Class A misdemeanors. On January 23, 2006, his case was scheduled for jury trial, but he entered an open guilty plea to the Class C felony and the other charges were dismissed.

When Person failed to appear for a sentencing hearing on April 11, 2006, the court proceeded to sentence him *in absentia*. It determined both aggravating and mitigating factors, and that the aggravating outweighed the mitigating. Person was sentenced to six and one half years.

Person was arrested on the warrant issued thereupon, and on January 18, 2007, a new sentencing hearing was held. The court found Person's criminal history to be a significant aggravator. It also found substantial aggravators in the fact that Person had been arrested twice while out on bond in this case and that anything less than an enhanced sentence would depreciate the seriousness of this offense. It found Person's guilty plea to be a mitigator, but not entitled to great weight since it was not entered until the day he was to go to trial. It also determined that his incarceration would work a hardship on his dependents, but that this, again, was entitled to only minimal weight. It determined that his mental state did not constitute a mitigating factor. The court then again sentenced Person to six and a half years.

The state argues that we lack jurisdiction because no timely appeal was taken from the original sentencing *in absentia* in June, 2006. While the argument presents an interesting question, in the interests of judicial economy we elect to address the merits of the issues raised by Person.

Person's initial argument contends that while forgery is a Class C felony, his violation was less egregious because he did not extract money from anyone.

Person's forgery consisted of signing a false name to a traffic ticket he received. He did so to evade arrest on an outstanding warrant against him. In our view this was a more serious offense than the forgery of a small check of some sort, which would also have constituted the offense. See, Ind. Code § 35-43-5-2.

We turn then to the aggravating and mitigating circumstances determined by the court.

Person's record disclosed that he had been convicted of five previous felonies in four separate cases and four separate misdemeanor convictions. As the trial court observed, this prior record is a significant aggravator which demonstrates the defendant's refusal to conform his conduct to the standards required by society.

The court also found a substantial aggravator in the fact that Person was arrested twice while he was released on bond in the present case.¹ The court determined that these actions demonstrated Person's disdain for the authority of the court to bring him to trial.

The court found that in view of Person's criminal history and a petition to revoke probation in a prior case, anything less than an enhanced term would depreciate the seriousness of the offense.

¹ He pled guilty to Class A Misdemeanor driving while suspended while released on bond.

We find the court committed no abuse of discretion in making these determinations.

Regarding mitigating circumstances, the court recognized Person's guilty plea, but did not give it significant weight because it occurred on the day that trial was to commence. That was appropriate because the plea did not occur until the state's trial preparation was completed, and, in return Person secured the dismissal of the three additional charges which included a Class D felony. *Kinhead v. State*, 791 N.E.2d 243, 247-248 (Ind. Ct. App. 2003).

The court also found a mitigator in possible hardship to Person's family, but again determined that it was not entitled to significant weight.

In answer to his counsel's questions at the hearing, Person stated that he had two children by one woman and another by the woman he was living with. He testified that he "made efforts" to support the first two and that he attempted to help to provide for the woman he lived with and that child. He stated he was giving the mother of the two children "about \$250" a month. No other evidence of Person's payment of support was offered.

From the evidence the court could well have concluded that Person's contributions to the support of his family were minimal and that his incarceration would not cause a substantial hardship on them.

Finally, the court considered Person's proffered mitigator of his "learning disability and depression" and concluded that they did not constitute mitigating circumstances. The court noted that Person had been diagnosed with depression while in

high school and had taken medication for several years, but had stopped some time ago. There was no medical opinion or history offered to support his claims.

The finding of mitigating circumstances, as well as the weight to be given them, rests within the sound discretion of the trial court. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) *trans. denied*. On appeal, a defendant has the burden of showing that the proffered mitigator is both significant and clearly supported by the record. *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000).

We find no abuse of discretion in the court's determination of the mitigating circumstances or the weight to be given them.

The court sentenced Person to six and a half years. Thus, it imposed an enhanced sentence of two and one half years out of the four years permitted by the statute for Class C felonies. Ind. Code §35-50-2-6(a). We find no error in it having done so.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.